

Programmatic Agreement
Between the
National Park Service and the
Utah State Historic Preservation Office
Regarding the
Multimodal Transportation Plan for Bryce Canyon National Park

WHEREAS, the National Park Service (NPS) is proposing a Multimodal Transportation Plan (the Plan) for Bryce Canyon National Park (BRCA or the Park) to address the most pressing traffic, parking, resource protection, and visitor access issues in the park relating to transportation issues such as vehicle circulation, vehicle and pedestrian conflicts, parking congestion and shuttle system use, and implementation; and

WHEREAS, the NPS has determined that the Plan is an undertaking as defined at 36 CFR 800.16(y) that triggers the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA/Section 106) on affected federal and non-federal lands; and

WHEREAS, the NPS has determined that effects on historic properties cannot be fully determined prior to the approval of the plan; the NPS in consultation with the Consulting Parties, has determined to use a phased process to assess effects to historic properties [36 CFR 800.5] such that the determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate adverse effects will be carried out in phases as part of planning for and prior to any notice to proceed; and

WHEREAS, the NPS has determined that a programmatic agreement documenting the terms and conditions for compliance with Section 106 will be negotiated among Consulting Parties according to 36 CFR 800.14(b); and

WHEREAS, *the NPS has consulted with the Advisory Council on Historic Preservation (Council) and the Council has elected to/not to participate in the consultation process for this Agreement under 36 CFR Part 800.14b; and*

WHEREAS, the NPS recognizes its government-to-government obligations to consult with federally-recognized Indian Tribes that may attach religions and cultural significance to historic properties that may be affected by the Undertaking and will continue to consult with affected Indian tribes regarding their concerns under Section 106. The NPS has initiated consultation with Indian Tribes and listed in Appendix A; and

WHEREAS, *none/some of these recognized Indian Tribes has elected to participate concurring parties in the drafting of this agreement, the NPS will continue to consult; and*

WHEREAS, proposed alternatives may include lands owned by the Forest Service and Bryce Canyon City, and they have been invited to participate in the drafting of this agreement as concurring parties; and

WHEREAS, the NPS has made available a draft of this PA for public review and comment and took public comment into account during the finalization of the PA;

NOW, THEREFORE, the Signatories to this PA agree that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to comply with Section 106 of the NHPA for the Undertaking.

STIPULATIONS

The NPS shall ensure that the following stipulations are met and carried out:

I. Area of Potential Effects (APE)

A. Defining the APE

The NPS, in consultation with the SHPO and other Consulting Parties has defined an overall project APE and identified cultural resources within the APE as discussed in the Environmental Assessment for this project.

B. Defining Phase APEs

Recognizing that as design progresses there may be changes to the project APE, the NPS will work with the SHPO and other consulting parties to re-evaluate the APE for each design phase of the project based on direct, indirect, and cumulative effects. The phase APE will apply to federal, state, and private lands that may be affected by construction and will include primary transportation elements such as roads, parking areas, pedestrian paths, staging areas, and borrow areas.

II. Protection of Confidential Information

To the extent consistent with the NHPA Section 304, and the The Archaeological Resources Protection Act of 1979 (ARPA) Section 9(a), cultural resource data from this Undertaking will be treated as confidential by all Consulting Parties and is not to be released to any person, organization or agency not a Party to this PA. Confidentiality concerns for properties that have traditional religious and cultural significance to the Indian tribes will be respected and will remain confidential to the fullest extent permitted by law.

III. Identification, Evaluation, and Determination of Effects

- A. The NPS has identified historic properties within the project APE, but recognizing the fact that the APE may change as design progresses, NPS will consult with the Indian tribes identified in Appendix A, the SHPO, and other consulting parties to determine if any additional surveys are needed to identify potential archeological, ethnographic, or built resources eligible for listing in the National Register of Historic Places in accordance with 36 CFR 800.4.
- B. The NPS will ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716) (*Federal Register*, September 29, 1983) and is consistent with the Advisory Council on Historic Preservation's (ACHP) guidance on archaeology and all applicable NPS guidance for evaluating National Register properties (*e.g.* Guidelines for Documenting and Evaluating Traditional Cultural Properties, Guidelines for Documenting and Evaluating Rural Historic Landscapes).
- C. For each cultural resource that is within the direct APE, the NPS, in consultation with appropriate federal agencies, state agencies, SHPOs, and any Indian tribe that attaches religious or cultural significance to any identified resource, will determine NRHP eligibility pursuant to

36 CFR 800.4(c)(1) following National Register Bulletin 15, *“How to Apply the National Register Criteria for Evaluation.”* Where there is insufficient information for making site eligibility determinations, the NPS, in consultation with the appropriate SHPO, may determine that archaeological testing or other investigations are necessary to complete NRHP evaluations for cultural resources that may be affected by the Undertaking.

D. For each eligible property identified in Stipulation III.C, the NPS, in consultation with appropriate federal agencies, state agencies, SHPOs, and any Indian tribe that attaches religious or cultural importance to any identified historic property, will assess effects in order to identify all reasonably foreseeable and potentially adverse effects that may occur as a result of the Undertaking.

IV. Consultation

A. Consultation with SHPO

NPS will provide historic property survey results, including information received from tribes and other consulting parties as discussed in Stipulation IV B and C to SHPO and will seek a consensus determination of eligibility and effect with SHPO for all cultural resources whether on federal, state, or private lands. These determinations of effect will serve as the basis for the development of Historic Property Treatment Plans (HPTPs).

- a. If the NPS and SHPO agree that the cultural resource is not eligible for listing in the NRHP, no further review or consideration under this PA will be required for such cultural resources.
- b. If the NPS and SHPO agree that the cultural resource is eligible, then effect determinations will be in accordance with Stipulation III. F.
- c. If the NPS and SHPO do not agree on eligibility, and agreement cannot be reached within 30 days, then the NPS will request a determination of eligibility from the Keeper of the National Register (Keeper), pursuant to 36 CFR 800.4(c)(2) and 36 CFR Part 63. The Keeper’s determination will be final.

B. Consultation with Indian Tribes

Through government-to-government consultation with Indian tribes, pursuant to 36 CFR 800.2(c)(2), the NPS and other federal land-managing agencies, as appropriate, will make a good faith effort to identify properties that have traditional religious and cultural significance to one or more Indian tribes and to determine whether they are historic properties. Confidentiality concerns expressed by Indian tribes for properties that have traditional religious and cultural importance [NHPA 101(d)(6)(A)] will be respected and will be protected to the extent allowed by law (see Stipulation II). NPS and the Indian tribes will work together to determine how and to what degree sensitive information may be conveyed to the SHPO.

C. Consultation with Other Consulting Parties

NPS will consult Consulting Parties (other than Indian tribes and SHPOs) for eligibility and effect findings, following 36 CFR 800.4(c) and 36 CFR 800.5(a)(1) and (a)(2)(i)-(vii) for actions off of NPS lands, actions that may cause cumulative effects on non-NPS land, or for actions or resource types in which the Consulting Parties have expressed an interest.

V. Resolution of Adverse Effects

If the NPS determines that the Undertaking will have an adverse effect on historic properties, the NPS shall consult with the SHPO, Consulting Parties and Indian tribes to develop and evaluate alternatives or modifications to the Undertaking that could avoid, minimize, or mitigate adverse effects to those properties.

A. The NPS, to the maximum extent possible, will undertake planning and actions that may be necessary to minimize harm to NHLs that may be directly and adversely affected by the Undertaking (36 CFR 800.10). The NPS will notify the ACHP and the Secretary of the Interior if the Undertaking will have an adverse effect on an NHL and will ask the ACHP and NPS to participate in consultation to resolve any adverse effects to NHLs prior to issuance of a Notice to Proceed (NTP).

B. Historic Preservation Treatment Plans

NPS will resolve adverse effects to historic properties by ensuring that a HPTP is prepared and implemented for each phase as appropriate, as described below. The HPTPs will provide

specific avoidance, minimization, or mitigation measures, commensurate with the adverse effects of the Undertaking, and to lessen any potential for cumulative effects.

1. Each HPTP will list all historic properties located within the APE that have been identified and are subject to adverse effects, including those avoided through special conditions (e.g., fencing, flagging), by land ownership; by township, range, and section number; and milepost of the Undertaking in which it occurs. The plans will identify the specific mitigation strategies proposed to address the direct, indirect, and cumulative effects of the Undertaking for both individual historic properties and specific groups of historic properties (e.g., archaeological sites, trails, etc.).
 - a. Each plan will identify whether the actions required to implement mitigation for each historic property must be implemented prior to the authorization of any ground-disturbing activities in a segment (e.g., archaeological data recovery, landscape photography), or will be implemented following authorization of ground-disturbing activities (e.g., historical research, installation of an interpretive kiosk, public education materials, etc.).
 - b. Each plan will provide a table listing each historic property, including:
 - (1) A distinctive name or number;
 - (2) A brief description of the property;
 - (3) Its sequential location in terms of distance and direction from a project-defined milepost(s) or similar established markers;
 - (4) The type of disturbance that will affect the site;
 - (5) The nature or kind of each required mitigation measure pertaining to each historic property (e.g., avoidance, minimization, landscape photography, archaeological data recovery, etc.);
 - (6) The identification of corresponding mitigation measures, if any, which must be completed prior to authorization of ground-disturbing activities and/or those measures which may be completed after such authorization of ground-disturbance in the area requested by the Applicant for initiation of construction; and
 - (7) The documentation and reporting procedures of the proposed treatment and mitigation.

2. Each HPTP will incorporate research designs as needed to guide data recovery and other treatment efforts. Existing research designs included within historic context documents acceptable to NPS and SHPO will be utilized when NPS and SHPO agree that they are appropriate to the specific property or group of properties.
3. Other treatment measures for adverse effects may be developed as appropriate to the resource type.
4. Because the HPTPs will be utilized as field guides during construction of the Undertaking, they will also include provisions for the discovery and treatment of previously unidentified cultural resources and the discovery of human remains, including a Plan of Action (see Stipulations VII and VIII).
5. Monitoring Plan

A Monitoring Plan will be developed as a subsection of the HPTP for implementation during construction, operation and maintenance.

a. This plan will address monitoring for compliance with stipulations of the HPTP, as well as a potential strategy to avoid, minimize, or mitigate direct, indirect or cumulative adverse effects to historic properties at any time during the Undertaking, and include provisions for inadvertent discoveries of cultural resources including human remains and archaeological sites.

b. All monitoring plans shall identify monitoring objectives and the methods necessary to attain these objectives, and in particular address those areas determined under the inventory to show a high probability for buried cultural deposits.

c. Monitoring shall, as appropriate, include archaeological inspection of construction activities by personnel under the direct supervision of a person meeting the Secretary of the Interior's Professional Qualifications standards.

d. Should tribal consultation indicate the need for tribal monitors along the construction route near sites or site types previously identified as significant to tribes or at testing or excavation locations, provisions for such monitors will be included in the plan.

- e. Any cultural resource, human remains or funerary objects discovered during pre-construction, construction, construction monitoring, or operation and maintenance activities will be treated in accordance with the inadvertent discovery protocols in the HPTP, described in Stipulation V.B.4.

VII. Discovery of Previously Unidentified Cultural Resources

If potential historic properties are discovered after construction has begun or unanticipated effects occur to known historic properties, the NPS will implement a Discovery Plan, which will be developed in consultation with Consulting Parties prior to issuance of any NTP and included in the HPTP per Stipulation V.B.4.

VIII. Discovery of Human Remains

If human remains are discovered, the NPS will follow the provisions of applicable state and local laws and NAGPRA (25 U.S.C. § 3001), per a Plan of Action that will be included in the HPTP. All work within 200 meters of the discovery will cease, and the Applicant will protect the discovery, as directed by the HPTP. Procedures for the discovery of human remains will be developed in consultation with Consulting Parties and prior to issuance of any NTP. The procedures will also address curation and repatriation.

XIV. Dispute Resolution

- A. Should any party to this PA object to the manner in which the measures stipulated in this PA are implemented they shall provide written notice to the NPS of the reason for, and a justification of, the objection. The objecting party also shall provide a proposed resolution to the objection. Upon acceptance of such notice, the NPS shall consult for up to 30 days with the Consulting Parties to resolve the objection. If the NPS determines that the objection cannot be resolved, the NPS shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP shall either provide the NPS with recommendations, which the NPS shall take into account in reaching a final decision regarding the dispute; or notify the NPS that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c)(4). The NPS will take into account any ACHP comment provided in response to such a request in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

- B. The NPS's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute will remain unchanged.

XV. Amendment

Any Signatory or Invited Signatory may request that the PA be amended by informing NPS in writing of the reason for the request and the proposed amendment language. The NPS shall notify all Consulting Parties of the proposed amendment and consult to reach agreement within 30 days, unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing the amendment retracts its proposal. The amendment will be effective on the date a copy signed by all the Signatories and Invited Signatories is filed by the NPS with the ACHP.

XVI. Termination

- A. Any of the Signatories and Invited Signatories who have signed this PA may terminate it.
- B. The termination process starts when a Signatory or Invited Signatory who has signed the PA provides written notice to the other Signatories and Invited Signatories of its intent to terminate. Termination shall take effect no less than 30 days after this notification, during which time the Signatories, Invited Signatories, and Concurring Parties shall consult to seek Agreement on amendments or any other actions that would address the issues and avoid termination. The notice must explain in detail the reasons for the proposed termination. The PA will be terminated at the end of the 30 day period unless the Signatories and Invited Signatories agree to a longer period of consultation or the party proposing termination retracts its proposal.
- C. In the event that this PA is terminated, the NPS shall comply with 36 CFR 800.6 (c)(8) and will take reasonable steps to avoid adverse effects to historic properties until another PA has been executed or will request, take into account, and respond to Council comments, in accordance with 36 CFR 800.7. NPS will notify all parties to this agreement as to the course of action it will pursue.

XVII. Duration of this PA

- A. Unless the PA is terminated pursuant to Stipulation XVI above, or another agreement executed for the Undertaking supersedes it, or the Undertaking has been canceled or is not approved, this PA will remain in full force and effect until NPS, in consultation with the other Signatories and Invited Signatories, determines that construction of all aspects of the Undertaking has been completed and that all terms of this PA have been fulfilled in a satisfactory manner, not to exceed twenty (20) years, unless each of the Signatories and Invited Signatories agrees to extend the term hereof through an amendment per Stipulation XV. Upon a determination by NPS that all terms of this PA have been fulfilled in a satisfactory manner, NPS will notify the Consulting Parties in writing of the agency's determination. This PA will terminate on the day that NPS so notifies the Consulting Parties.
- B. The actions occurring under the PA will be summarized and reported in the Superintendent's biennial meetings and reports to SHPO as described in Stipulation VIIIA of the NPS Nationwide Programmatic Agreement among the NPS, Advisory Council on Historic Preservation and National Conference of SHPOs for Compliance with Section 106 of the National Historic Preservation Act. Should either party have concern about how this PA is being carried out, they may use this meeting to ask for further discussion and potential amendment of the PA following procedures in XV of the PA.

EXECUTION of this PA by the Signatories and Invited Signatories and implementation of its terms evidence that the NPS and the other federal agencies have taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment on it in compliance with Section 106.

SIGNATORIES

INVITED SIGNATORIES

CONCURRING PARTIES

Appendix A

Bryce Canyon National Park Affiliated Tribes:

The American Indian tribes traditionally associated with the lands within the park are:

Paiute Indian Tribe of Utah, consisting of five bands:

- Cedar Band
- Indian Peaks Band
- Kanosh Band
- Koosharem Band
- Shivwits Band

San Juan Southern Paiute Tribe of Arizona

Kaibab Band of Paiute Indians

Moapa Band of Paiute Indians

Las Vegas Tribe of Paiute Indians

Chemehuevi Indian Tribe

Navajo Nation, consisting of five chapters:

- Aneth Chapter
- Dennehotso Chapter
- Oljato Chapter
- Red Mesa Chapter
- Teec Nos Pos Chapter

Zuni Pueblo

Confederated Tribes of the Goshute Reservation

Skull Valley Band of Goshute Indians of Utah

Ute Indian Tribe of the Uintah and Ouray Reservation

Ute Mountain Tribe

White Mesa Ute

Northwestern Band of the Shoshone Nation

Hopi Tribe of Arizona